

NOV 13 2006

Docket No. 411677

Sent Via Facsimile (571) 273 8300

REMARKS

Reconsideration in view of the following remarks is respectfully requested.

Moreover, the applicants have reviewed the Non-Final Office Action of May 11, 2006, and submit that this paper is responsive to all points raised therein.

I. Status of the Claims

Claims 1-22 are pending in the instant Patent Application.

II. Objections to the Disclosure

The disclosure was objected to as lacking a reference to a prior application to claim the benefit thereof.

It is respectfully asserted that the applicants amended the above-listed patent application in a Preliminary Amendment of July 23, 2003 to indicate that the above listed patent application is a continuation of U.S. Patent Application Serial No. 10/289,916, filed November 1, 2002.

This data has been updated here, as U.S. Patent Application Serial No. 10/289,916, is now abandoned.

Accordingly, it is respectfully asserted that this objection is cured.

III. Rejections Under 35 U.S.C. § 102(b)

Claims 1-22 were rejected under 35 U.S.C. § 102(b) as anticipated by the document, Jacobs, et al., Tunnel Communication Test Results, Department of the Interior Bureau of Reclamation, Project Notes 8450-98-06, September 1998 (the Tunnel Communications Test Results document).

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It is respectfully asserted that the Tunnel Communications Test Results document is not prior art under 35 U.S.C. § 102(b), as the earliest date that the Tunnel Communications Test Results document was publicly available was May 30, 2003. On this date, the Tunnel Communications Test Results document was available electronically on the web site of the Bureau of Reclamation in portable document format (PDF) and hypertext markup language (HTML) format.

The applicants support this first date of public availability of the Tunnel Communications Test Results document by their Declaration Under 37 C.F.R. § 1.132, submitted herewith.

Based on the above, the Tunnel Communications Test Results document was available to qualify as anticipatory prior art under 35 U.S.C. § 102, as of May 30, 2003. The above listed patent application claims priority to, and is a continuation application of, U.S. Patent Application Serial No. 10/285,916, filed November 1, 2002. Since the priority of November 1, 2002 is before the 35 U.S.C. § 102 date of May 30, 2003, the Tunnel Communications Test Results document is not prior art under 35 U.S.C. § 102 or 35 U.S.C. § 103, whereby the rejection of claims 1-22 under 35 U.S.C. § 102(b) is improper.

Accordingly, it is respectfully requested that this rejection be withdrawn. Claims 1-22 are in proper form for issuance, for which an early notice of allowance is requested.

IV. Conclusion

Should the Examiner have any question or comment as to the form, content or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the

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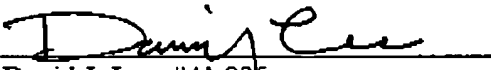
prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Allowance of all pending claims, 1-22, is respectfully requested.

Authorization to charge fees associated with a three month extension of time is submitted herewith. If any additional fee is deemed necessary in connection with this Amendment and Response, the Commissioner is authorized to charge Deposit Account No. 12-0600.

Respectfully submitted,

LATHROP & GAGE, LC

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